

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

JOHN BARRETT

PLAINTIFF

VS.

CIVIL ACTION NO. 2:06cv271-KS-MTP

MDOC, *et al.*

DEFENDANTS

ORDER DENYING MOTION FOR DEFAULT JUDGMENT

THIS MATTER is before the court on the plaintiff's Motion [61] for Default Judgment against Nurse Yvonne Barton. Having considered the plaintiff's motion, along with documents made a part of the record of this case and the applicable law, the court finds that the plaintiff's motion should be DENIED.

In his Motion [61], filed on October 9, 2007, the plaintiff asks the court to enter a default judgment against defendant Yvonne Barton. The plaintiff recognizes that Ms. Barton filed her Answer [60] to plaintiff's Complaint on September 18, 2007, but alleges that her Answer is untimely, since she was served with process on July 25, 2007.

The entry of a default judgment is not appropriate under the circumstances of this case pursuant to Fed. R. Civ. P. 55(a), because Ms. Barton has not "failed to plead or otherwise defend" in this action. Further, "a party is not entitled to a default judgment as a matter of right, even where the defendant is technically in default." *Lewis v. Lynn*, 236 F.3d 766, 767 (5th Cir. 2001) (*quoting Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996)). "In fact, '[d]efault judgments are a drastic remedy, not favored by the Federal Rules and resorted to by courts only in extreme situations.'" *Lewis*, 236 F.3d at 767 (*quoting Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989)). Finally, this action is subject to the Prison Litigation Reform Act of 1995, which provides that "No relief shall be granted to the

plaintiff unless a reply has been filed.” 42 U.S.C. § 1997e(g)(1). Accordingly,

IT IS, THEREFORE, ORDERED:

That the plaintiff’s Motion [61] for Default Judgment against Nurse Yvonne Barton is
DENIED.

SO ORDERED this the 11th day of October, 2007.

s/ Michael T. Parker

United States Magistrate Judge